IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

WA.No. 2363 of 2006()

AGAINST THE JUDGEMENT/ORDER IN WPC.5140/2004 Dated 05/06/2006
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APPELLANT: 3RD RESPONDENT

ELANGULAM SERVICE CO-OPERATIVE BANK LTD. 3576, KOORALI P.O., KOTTAYAM, REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.P.GOPAL

RESPONDENTS: RESPONDENTS 1 & 2 & PETITIONER
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1. VARKEY GEORGE, CHERUPURAM HOUSE, CHENGALAM, PONKUNNAM.

2. GOVERNMENT OF KERALA, REPRESENTED BY ITS SECRETARY, CO-OPERATION DEPARTMENT, THIRUVANANTHAPURAM.

3. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), KOTTAYAM.

BY ADV. SRI.A.ANTONY FOR R1
SMT.LEELAMMA ANTONY
GOVERNMENT PLEADER SRI.P.A.SALIM

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

W.A. NO. 2363 OF 2006

Dated this the 13th day of February, 2007

J U D G M E N T

KOSHY, J.

According to the writ petitioner, he is a member of the 3rd respondent bank (which is a co-operative society) and he and his brother's son have availed two loans. The collateral security for the said loan was the property belonging to the petitioner having an extent of 21.90 Ares. Mortgage deeds were executed. All the loan amounts were duly paid. But despite that, release deeds were not executed. By Ext.P2, 2nd respondent Joint Registrar allowed the petition filed by the writ petitioner and directed the appellant credit society to release the deed. The appeal filed to the Government was allowed by Ext.P5 order. The learned Single Judge after detailed consideration found that since the amount of loan taken from the mortgagee was repaid with interest ,the mortgage deed should be released and Exhibit P2 was upheld.

2. The case of the appellant is that there are two loans pending and the security furnished for repayment of the above are not sufficient and therefore there is a lien to them. The lien applicable to the banks cannot be claimed strictly by the Agricultural or Primary Credit Societies as it is not a Bank as

defined under the Banking Regulation Act. Writ petitioner has mortgaged the properties in respect of specific loans and those loan amounts with interest was paid and if any other amounts are due to the Bank in separate transactions, appellant can proceed against them according to law. But it cannot refuse to release the deed without a specific mortgage of their properties. With respect to any other loan, appellant is also free to attach the property according to law. The observations of this court in **D.Vijayalakshmi v. The Kerala State Financial Enterprises Ltd. & Others (2005(1) KLJ 396)** is also rightly applicable in this case as held by the learned Single Judge.

3. In the above circumstances, we see no ground to differ from the judgment of the learned Single Judge and the writ appeal is dismissed. This judgment will not prohibit the appellant Bank to proceed against the petitioner or his properties if there are other loans due.

Writ appeal is dismissed.

J.B.KOSHY, JUDGE

T.R.RAMACHANDRAN NAIR, JUDGE

Rp